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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

ADAM SHAFI,
Defendant.

Case No.: CR 3:15-CR-0582 WHO

**ADAM SHAFI REPLY TO UNITED
STATES OPPOSITION TO MOTION
FOR BILL OF PARTICULARS**

Court: Courtroom 2, 17th
Floor

Hearing Date: August 24, 2017

Hearing Time: 1:30 p.m.

REPLY IN SUPPORT OF MOTION FOR BILL OF PARTICULARS

In arguing that a bill of particulars is not appropriate in the instant case because the government has “repeatedly particularized” its theory of prosecution, the government appears to have misunderstood the purpose of Mr. Shafi’s motion requesting a bill of particulars. Government’s Opposition to Def’s Mtn. for a Bill of Particulars at 11:7-9. The purpose of Mr. Shafi’s request for a bill of particulars was to allow him to “prepare his defense and ascertain

1 what facts were presented to the grand jury,” and to “inform the Court of the facts alleged, so
 2 that the court can determine the sufficiency of the charge.” *United States v. Long*, 706 F.2d
 3 1044, 1054 (9th Cir. 1983); *See also United States v. Resendiz-Ponce*, 549 U.S. 102, 107
 4 (2007) (citing *Hamling v. United States*, 418 U.S. 87, 117 (1974)).

5 There is clear Ninth Circuit case law that states that a bill of particulars can
 6 “supplement the indictment by providing more detail upon which the charges are based.”
 7 *United States v. Inryco, Inc.*, 642 F.2d 290, 295 (9th Cir. 1981). In other words, a bill of
 8 particulars can further explain the evidence upon which charges in an indictment are based.
 9 Furthermore, a bill of particulars can also be used by a defendant for clarification: a “motion
 10 for a bill of particulars is appropriate where a defendant requires clarification in order to
 11 prepare a defense.” *United States v. Long*, 706 F.2d 1044, 1054 (9th Cir. 1983).¹

12 That being said, in its’ Opposition, the government has made clear that it has no
 13 evidence of contact between Shafi and Al-Nusra (nor ISIS) and that it believes it doesn’t need
 14 any as this is an attempt case. Opp’n at 11:5-9; 13:5-10, fn. 10.² Considering that

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 16 ¹ In Footnote 12 of the Opposition, the Government misrepresents Mr. Shafi’s reference to
 17 *United States v. Nagi*, No. 15-2122 (W.D.N.Y. July 31, 2015) [Docket No. 12]. Footnote 12
 18 asserts that Mr. Shafi did not correctly characterize the *Nagi* case because he did not mention
 19 that the district court rejected the request for a bill of particulars in that case. Government’s
 20 Opposition to Def’s Mtn. for a Bill of Particulars, Fn. 12 at 16. However, the purpose was not
 21 to show that the court ruled in favor of the defendant on the request for a bill of particulars, but
 rather to show that in that case, unlike in Mr. Shafi’s case, there was in fact evidence of direct
 contact with ISIL operatives prior to the defendant’s travel. *United States v. Nagi*, No. 15-2122
 (W.D.N.Y. July 31, 2015) [Docket No. 12].

22 ² The Government explicitly states that “the United States is not required to prove that the
 23 defendant *was under* the ‘direction or control’ of the al-Nusrah Front,” at the time he attempted
 24 to travel. Opp’n. at 13:7-8. The Government goes on to request that the court “reject the
 25 defendant’s invitation in this case to create a new and contrary rule that contact with a foreign
 26 terrorist organization is required for an attempted material support charge.” *Id.* at 15:12-16.
 However, the Government is mistaken in assuming that there is in fact a rule that contact with a
 foreign terrorist organization is *not* required, as this issue has not been decided in either
 direction in the Ninth Circuit or the Supreme Court.

27 Nor is there any binding authority on what qualifies as sufficient evidence to prove an attempt
 28 in the context of subsection (h). It seems clear that if a defendant had contact with a FTO and
 was arrested at the airport while en route to fly to the FTO, that would be sufficient for an
 attempt. It remains to be seen, however, if, as is alleged here, a defendant has had no contact

1 representation, the defense no longer believes a bill of particulars is necessary and believes the
2 August 24th hearing can be taken off calendar (three motions remain pending for hearing on
3 October 12, 2017).

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7 Dated: August 17, 2017

Respectfully submitted,

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27 whatsoever with a FTO, no idea whether the FTO has any interest in having him join, and no
28 specific plan for how to actually reach the FTO or any of its members, but rather arrives at an
airport with only a wing and a prayer, that will be sufficient to meet the constitutionally-
mandated coordination requirements of subsection (h). This is, of course, assuming that Mr.
Shafi's intent was to actually fight with Al-Nusra, which is a matter of dispute as well.